LIBRARY
SUPREME COURT, U.S.

NOV 21 1957
JOHN T. [illegible], Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1957

No. 393

GABRIEL GOMEZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

LOUIE A. SABATINO
Attorney for Petitioner
923 duPont Building
Miami 32, Florida

INDEX

	Page
Rehearing Sought	1
Argument	2-15
Conclusion	16
Appendix	App. 1
Certification	

TABLE OF CASES

Page

State v. Guynn
48 P. 2d. 902 (Utah) 5

State v. Elliott
168 S.E. 546 (South Carolina) 5

State v. Tart
155 S.E. 609 (North Carolina) 6

Reeson v. State
173 P. 1033 (Oklahoma) 8

Boren v. State
4 S. W. 463 (Texas) 8

Lamphier v. The State
70 Indiana Reports 317 9

Leach v. State
18 So. 2d. 289 (Alabama) 11

White v. State
176 So. 842 (Florida) 12

Virgil Beasley v. State
96 So. 2d. 693 (Alabama) 14

STATUTES AND RULES

Florida Statutes Annotated
FSA 40.01 (1) ..... App. 1

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1957

No. 393

GABRIEL GOMEZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES

REHEARING SOUGHT

Gabriel Gomez, the petitioner, submits this his petition for rehearing of order denying petition for writ of certiorari entered October 28, 1957, and requests this Honorable Court, in accordance with its Rule 58 (2), to consider that which the petitioner feels is a substantial ground available to the petitioner although not previously presented in the petition for writ of certiorari heretofore

filed herein. (Counsel's certificate of good faith appears at end of this petition.)

ARGUMENT

At the trial, particularly on voir dire, the juror, Charles North, was administered the following oath, (R-111):

> "You and each of you do solemnly swear that you will true answer make to all such questions as may be propounded to you touching upon your qualifications to serve as petit jurors in this Court. So help you God."

Following the administration of the above oath, the Juror, Charles North, answered in the affirmative to the question, (R-111):

> "Are you a duly qualified elector in the County from which you are summoned?"

It is the appellant's contention that the juror, Charles North, was not qualified to hear the case on review when it was tried in the court below, because he was not a qualified elector in the county from which he was summoned, which was discovered after trial.

The petitioner submits that the petit juror, Charles North, was not a qualified juror and even though this was discovered after the verdict, a new trial should have been granted because his disqualification was not one which might have been discovered by routine questioning of jurors on voir dire since the juror in question was asked by the Clerk of the Court, under oath:

"Are you a duly qualified elector in the County from which you are summoned?"

To the above question, the juror, Charles North, answered in the affirmative (R-111).

Therefore, the petitioner contends that since this question was asked by the Clerk of the Court and the juror answered the same under oath, the petitioner had a right to rely upon that answer and that this juror knew what consitutes, "a qualified jurror", and was not required to make further investigation and object prior or during the trial but that objection after trial in view of the circumstances was sufficient.

Title 28 USCA, Section 1861 (4) states, among other things, that a person is competent to serve as a grand or petit juror unless he is incompetent to serve as a grand or petit juror by the laws of the state in which the District Court is held.

The law of the State of Florida, F.S.A. 40.01 (1), Laws of 1951, requires, among other things, that a juror be a person who is a duly qualified elector in his county.

The juror, Charles North, was not a duly qualified elector in Dade County, Florida, in that he was purged from the jury list of Dade County, Florida, in 1955 by reason of his not having been a qualified elector (R-79) and remained purged as aforesaid until Friday, March 15, 1956 when he re-registered with the Supervisor of Registration, Dade County, Florida, (R-78). The trial of the foregoing case commenced on March 12, 1956, and a verict was returned on March 19, 1956 (R-74) (filed on

March 20, 1956), therefore, this juror was not qualified during all of the time that he served on said jury.

The petitioner and his defense counsel, having had no choice but to rely upon the sworn answer of the juror, Charles North, given by him on voir dire, were precluded from exercising a challenge for cause. The undersigned, who was petitioner's defense counsel at the trial, *again certifies by his signature below*, that the disqualification of the juror, Charles North, here complained of, was not discovered until after trial, in fact, three days later, March 23, 1956, (R-80-81).

The writer has searched the cases touching on the matter of objecting to a juror's qualifications after verdict; most of the cases found hold that objection after verdict comes too late However, all of these cases are cases where the defendant could have found the particular point of disqualification of the juror had he inquired of him or challenged him for cause on voir dire but did not do so. In the case here on review, the inquiry was made and the answer was given under oath, thus the petitioner was within his rights to rely upon such sworn answer, that is, that the juror was a qualified elector in the county from which he was summoned. It would seem unreasonable that a defendant be put in a position of having to verify answers given under oath by a juror. If such were the requirement of a defendant then the practice in our courts would be to adjourn for a day or two after voir dire so that the defendant may be afforded an opportunity to verify answers given under oath by jurors.

From the case submitted below, it seems that the petitioner's contention in this regard is with merit and has been sustained by various state courts.

STATE v. GUYNN
48 P. 2d. 902

In the Guynn case, a juror was asked if he had been a deputy sheriff during a certain strike; the case on trial was one of a charge of riot during a certain strike, the juror answered in the negative and after verdict, it was discovered that in fact he had been a deputy sheriff during the strike in question. The Supreme Court of Utah, in reversing the judgment of conviction said:

> "The incompetency of a juror is ground for a new trial, when discovered after verdict, where he denied the ground of his incompetency on his voir dire examination."

STATE v. ELLIOTT
168 S.E. 546

In the Elliott case, the defendant claimed after trial that one of the jurors was not a resident of the county (Horry county) from which he was summoned, and according to the law, a juror was to have been a resident of the county from which he was summoned. The prosecution insisted that the defendant did not use due diligence to ascertain prior to the verdict as to whether or not the juror was a resident of the county in question and therefore could not complain after verdict. The court's attention is invited in the Elliott case the inquiry was not made of the juror himself but of the clerk of the trial court and the Supreme Court of South Carolina stated, in reversing the conviction and remanding the case for a new trial that the defendant had a right to rely upon that which was told to him by the clerk of the trial court from whom the information was sought. The court said:

"He sought information of the man who was, probably, better qualified to give it than any man in the country, viz, the clerk of the court, who is ex officio member of the board of jury commissioners, and participated in the drawing of this very jury. It appears by his affidavit that he knew that Sarvis was a duly appointed constable but that he did not apprise counsel of that fact. On the contrary, he assured him that Sarvis was a farmer, a good substantial man, and would make a good juror. It is urged in argument that Sarvis was a bonded constable, whose bond was on file in the clerk's office and that counsel, with the exercise of due diligence, would have ascertained this fact. This is enforcing the requirement of due diligence with too great harshness. There was literally nothing to suggest to counsel that one of the prospective jurors might be a bonded officer of the law. He had every right to rely upon the presumption that the officers who drew the jury knew their duty and did it. He went to the highest authority from which to gain information of the men who composed the venire. It appears to me that counsel showed unusual diligence in the effort to ascertain all about the jurors. This court is disposed to apply the rule of due diligence with more leniency where human life is concerned."

STATE v. TART
155 S.E. 609

The claim in the Tart case was a follows: One of the jurors, a certain W. H. Patterson, who was sworn and

impanelled to try the case, was asked if he was related to the prosecutrix within the seventh degree. The defense counsel asked:

> "If there is any member of the jury related to the prosecutrix by blood or marriage, please let that fact be known and excuse himself."

To this question, the juror Patterson made no reply. After verdict, it was discovered that Patterson was related to the prosecutrix. The record also shows that Patterson discovered this relationship before any evidence was introduced and wanted to disclose this fact to the court but was advised not to do so. The trial court denied a motion for a new trial and determined that the defendant was not prejudiced by this juror serving.

In reversing the trial court and remanding the case for a new trial, the Supreme Court of North Carolina determined that the defendant was deprived of his right to challenge this juror, if he so desired.

The court also stated that whether or not the juror actually yielded to his passion and prejudice, was not the point. The point was that the potential bias which the law condemned was present and that the defendant, through no fault of his own, was prevented from discovering its evidence.

The court's attention is invited to the fact that the juror, Charles North, in the case here on review, must have found that he was not a qualified elector since during the course of the trial, March 16, 1956, he re-registered (R-78-79), but did not disclose this fact.

REESON v. STATE
173 P. 1033

Here the Criminal Court of Appeals of Oklahoma determined that a new trial should be granted where it is discovered after verdict that a juror did not disclose on his voir dire that he was a sheriff's deputy—the Oklahoma code requires jurors have the qualifications of electors, be of good moral character and not be judges, sheriffs or deputy sheriffs, constables and etcetera.

The appellate court said:

> "Here the record shows that the juror Day on his voir dire qualified as a juror by his answers to questions by the court and by counsel. Appellant was not bound to anticipate that talesmen *would be called from among the sheriff's deputies*, and the juror Day should have disclosed the relationship on the general examination as to his competency."

BOREN v. STATE
4 S.W. 463

The Boren case, which originated in Texas, was one where one of the jurors that tried the case on voir dire examination by the court, stated that he was a freeholder in the county wherein the trial was held. After trial, it was discovered that this juror was neither a freeholder in the state nor a householder in the county. Following this discovery, a motion for new trial was made and denied. In reversing the judgment of conviction and remanding the cause for a new trial, the Court of Appeals of Texas said:

"We are of the opinion that the new trial should have been granted on this ground. Our statute provides that, 'All male persons over twenty-one years of age are competent jurors unless disqualified under some provision of this chapter'. The second ground of disqualification is that the juror is not a freeholder in the state, or householder in the county. It appears from the record that the court tested the qualification of the juror under the law and that the juror qualified himself by answering that he was a freeholder. The appellant and his counsel make oath that his disqualification was not known to them until after trial. There is no evidence that they, or either of them did, except that which might be supposed to arise from the fact that they had intimately known the juror Horsford for years previously. This is not such proof, if it be proof at all, as will prevail over the oaths of appellant and his counsel that the disqualification was not known to them until after trial."

LAMPHIER v. THE STATE
70, Indiana Reports 317

In the State of Indiana at the time the Lamphier case was tried, the law required a juror to be a voter and, in addition, a freeholder or householder in the county from which he was summoned. One of the jurors qualified as such by answering questions on voir dire, which questions were answered under oath. After trial, it was discovered that this particular juror was a qualified voter but was neither a freeholder nor a householder. The trial court denied a motion for new trial wherein the incom-

petency of this juror was raised. In reviewing the judgment of conviction and remanding the cause for new trial, the Supreme Court of Indiana said:

> "The third cause assigned for a new trial was in substance this: That Samuel McIlroy, one of the jurors of the jury which tried this cause, was not a competent juror, under the law, in this, that he was neither a householder nor a freeholder of said Jennings county, at the time of his service as such juror. In section 1 of 'An act to prescribe the qualifications of petit jurors in the several courts of this State,' approved March 8th, 1873, which act was then and still is in force, it was and is provided 'That any person who is either a householder or freeholder and a qualified voter, in any county of this State, shall be qualified to serve as a petit juror in any court in such county in which such persons shall be such householder or freeholder and qualified voter.' Acts 1873, p. 159; 2 R. S. 1876, p. 31. It is clear, we think, from the record of this cause, that Samuel McIlroy, although a qualified voter, was neither a householder nor a freeholder of said Jennings county, and that he was not, therefore, under the law, a competent juror for the trial of this cause. Before the jury were sworn to try the cause, the record shows that the jurors, including said McIlroy, were severally examined on oath, under the direction of the court, in relation to their respective qualifications as such jurors, and especially as to whether or not they were either householders or freeholders of said Jennings County. It seems to us from our

examination of the record, that the answers of said McIlroy to the questions asked him, from his own mistaken views of his qualifications as a juror, were well calculated to and did mislead and deceive both the court and the counsel engaged in the trial of the cause. The appellant was entitled, under the law, to a trial of her cause by a jury of competent jurors. McIlroy was neither a householder nor a freeholder of said Jennings county, and therefore he was not a competent juror for the trial of this cause; but he was accepted as a juror by the appellant and her counsel, without fault or negligence on her or their part, and in ignorance at the time of his incompetency. All these facts are clearly and fairly shown by the record of this cause; and, therefore, we think it can not be correctly said, that the appellant waived her objection, or her right to object, to the competency of said McIlroy, as a juror, or that she consented to the trial of her cause by an incompetent juror. Rice v. The State, 16 Ind. 298; Croy v. The State, 32 Ind. 384; and Hudspeth v. Herston, 64 Ind. 133.

We are of the opinion, that this third cause for a new trial was well assigned, and that, for this cause, the appellant's motion therefor ought to have been granted."

LEACH v. STATE
18 So. 2d. 289

In the Leach case, the defendant asked the prospective jurors if any of them had been a deputy sheriff; two of

them answered in the affirmative and one, who had been, did not so answer. Whether he deliberately or intentionally so answered, the court said was unimportant. This fact was not discovered by the defendant until after verdict. The Court of Appeals of Alabama (18 So. 2d. 285) reversed the lower court and remanded the case for new trial and also denied a rehearing. The State, that is, the prosecution, petitioned for a writ of certiorari and the Supreme Court of Alabama, in denying the writ, said:

> "The fact was unknown to defendant or his counsel until after the trial. The question is one of diligence. Defendant did not personally ask the question as authorized by section 52, Title 30, supra. But the court yielded to defendant's request and did so. Defendant need not assume that had he propounded the question a different result would have been obtained. We agree with the Court of Appeals that although the juror was not disqualified, defendant had a right to have the question answered truly to enable him to exercise his discretion wisely in using his power to strike him without cause."

WHITE v. STATE
176 So. 842

In the White case, the juror was asked if he had ever been represented by any of the attorneys in the case, that is prosecution attorneys or defense attoreny. The juror answered in the negative. It was discovered that this juror had been a client of one of the attorneys representing the State. The Supreme Court of Florida, in reversing the judgment of conviction and remanding the cause for new trial, said:

"It, therefore, followed that when the attorney for one of the parties to a suit asks a proposed juror who is being examined upon his voir dire whether or not he is or has been represented by either of the attorneys appearing in the case, he is entitled to have a full, frank and truthful answer. If the venireman answers "yes", then the attorney propounding the question may go further for the purpose of determining whether or not that relationship is such as either to disqualify the venireman or as to make him so undesirable as a juror in the cause that the party represented by such attorney propounding the question may exercise his right of challenge of that juror. If the juror, by inadvertence or otherwise, answers the initial question falsely, he withholds from the attorney propounding the question and his client vital information.****

**** The record makes it clear that the untruthful answer made by the juror, as herein referred to, was with no intent to deceive counsel. It is also clear that the attorney who had represented the juror may have, for the moment, forgotten the incident and, therefore, did not correct the answer of the juror. That all this happened inadvertently cannot be said, however, to cure the error.****

**** Therefore, without attributing evil motives to the juror or to counsel, we must hold that the unfortunate incident was sufficient to require the granting of a new trial."

VIRGIL BEASLEY v. STATE
Court of Appeals of Alabama
(Decided August 13, 1957)
96 So. 2d. 693

In the Beasley case, on voir dire, the jurors were asked if any of them had been convicted of a crime involving moral turpitude. The juror Jenkins remained silent on the question and served as a petit juror. After trial, it was discovered that Jenkins had been involved in a crime involving moral turpitude, that is, adultery. The trial court denied a motion for new trial, however, on appeal, the appellate court reversed the trial court and remanded the case for new trial stating, among other things:

> "Ordinarily a man cannot be said to waive that which he does not know, or by the exercise of reasonable diligence cannot know, e.g. Bell v. Birmingham Broadcasting Co., 263 Ala. 355, 82 So. 2d 345. But waiver here applies to the rights of challenge which is a known legal right. This view of waiver makes critical the aspect of the case arising from Jenkins' failure to answer the trial judge's question pertinent to his conviction."

From the cases above submitted, it seems that the courts are not only concerned with whether or not the defendant was prejudiced due to a particular disqualification of a jury or a juror's possession of an element which might render him incapable of rendering a fair and impartial verdict but the courts seem to frown upon a juror that does not disclose the true facts concerning himself, whether intentionally or unintentionally, because no one knowns what election a defendant might make if jurors

answer questions correctly and truthfully. For example, in the White case above submitted, it is not logical to conclude that the juror who had been represented by one of the prosecution attorneys would be prejudiced against a defendant on trial—it was not the attorney that was on trial nor was the attorney a party litigant to the case, yet, the Supreme Court of Florida held that the mere failure to disclose a juror's past relationship of attorney and client between a prosecuting attorney and himself was sufficient to disqualify himself and to set aside the judgment of conviction it seems that the untrue and incorrect sworn answer of the juror, Charles North, in the case here on appeal should have the same effect.

To go even further, the Boren case and the Lamphier case concerned jurors who said they were freeholders or householders in the county from which they were summoned and it was discovered after trial they were not freeholders or householders—the question of whether or not the jurors in question were prejudiced against the defendants was not considered—the fact that these jurors did not qualify under the law and did not truthfully or correctly state their ownership of realty or a home in the county in question, which was not discovered until after trial, was sufficient to grant a new trial.

CONCLUSION

This petition for rehearing of order denying writ of certiorari is therefore respectfully submitted to the Honorable Supreme Court of the United States for its consideration and the petitioner respectfully prays that said writ be granted and that the judgment of the United States Court of Appeals for the Fifth Circuit be reviewed.

Respectfully submitted,

LOUIS A. SABATINO
Attorney for Petitioner
923 duPont Building
Miami 32, Florida

APPENDIX A

Florida Statutes Annotated

Chapter 40. JUROR AND JURY LISTS
Section 40.01:

"Qualification and disqualification

(1) Grand and petit jurors shall be taken from the male and female persons over the age of twenty-one years, who are citizens of this state, and who have resided in the state for one year and in their respective counties for six months, and who are duly qualified electors of their respective counties; provided, however, that the name of no female person shall be taken for jury service unless said person has registered with the clerk of the circuit court her desire to be placed on the jury list. ***"

APPENDIX B

JUDGMENT

Extract from the Minutes of June 24, 1957.

GABRIEL GOMEZ,

No. 16063 versus

UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

APPENDIX C

IN THE
United States Court of Appeals
FOR THE FIFTH CIRCUIT

No. 16063

GABRIEL GOMEZ,

Appellant,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Southern District of Florida.

(June 24, 1957.)

Before HUTCHESON, Chief Judge, and TUTTLE and JONES, Circuit Judges.

TUTTLE, Circuit Judge: This is an appeal from a conviction of appellant on several counts of an indictment charging a conspiracy to defraud and substantive acts of defrauding the United States by claiming money from the United States for lessons in a foreign language taught students under what is commonly known as the G.I. Bill.

The principal basis for the appeal is the action of the trial court in consolidating for trial two other indictments involving other acts and other actors in addition to one central figure who was named in all three indictments.

There was ample evidence to support the Government's charge that at the Miami branch of a foreign language school there had been widespread participation by manager, assistant manager, teachers and students in a scheme to overstate to the Veterans Administration the actual number of hours of teaching and the numbers of students enrolled and numbers of hours of instruction received by individual students. The fruits of such a scheme were many fold. Managers of the school would receive compensation they were not entitled to, as well as kickbacks from teachers who participated in the fraud; the teachers would be paid for work not done and students would receive subsistence allowances they were not entitled to.

The particular indictment on which appellant was tried was based on his actions as a teacher in participating with the manager, Arango, and others in causing the false records to be prepared for submission to the Veterans Administration. The indictment charged many instances of naming certain students or fictitious students in whose names falsified attendance slips were made up.

The two other indictments, whose consolidation with the one naming Gomez is the principal basis of Gomez's appeal, each charged Arango and others (but not Gomez) with conspiring with a certain named student to cause him to falsify his attendance records as a result of which the student was paid by the Government certain sums for subsistence which he was not entitled to receive.

Appellant strongly urges that it was prejudicial error for the trial court to consolidate for trial the three indictments, in two of which he was not named as a defendant. He says that the accumulation of evidence in the two cases in which he was not a defendant prejudiced his defense in the case in which he was responding because of the danger of identifying him with acts proven against the others.

The rule of procedure under which the trial court acted, and which the Government here contends supports its action, provides:

> "The court may order two or more indictments or information or both to be tried together if the offenses, and the defendants if there is more than one, cuold have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information." 18 U.S.C.A., Rule 13.

It thus becomes necessary for us to determine whether the charges against Arango and the students could have been included as counts of the indictment against Arango and the teachers.

In the nature of the indictment against appellant there were three groups involved; the school management, the teachers and the students whose instruction was the thing actually paid for by the Government. Whenever a student claimed hours of instruction that he didn't receive this could be calculated to defraud the Government in two ways; first by padding the demand for tuition,

and second by increasing the amount of subsistence. Clearly the connivances of the three groups would be helpful if not necessary for the successful operation of the scheme. The management could not safely claim excessive numbers of hours taught without cooperation of the teachers who certified to the false reports, and they could not safely make false reports of hours taught without cooperation of some of the students who were reported as the ultimate recipients of the fictitious periods of instruction.

Appellant has brought up to us the transcript of testimony of four witnesses who he says were called to testify in the cases of the student indictments. The caption shows that their testimony was in the case in which Gomez was on trial. However, assuming that they testified only in the other two trials that were consolidated with Gomez's trial, we find nothing in this testimony that would not have been admissible on the main trial. All four of the witnesses mentioned Gomez as a teacher or as being connected with the school. One of them testified that Gomez solicited the students' enrollment. All of their testimony related to the actual hours of instruction, and it was relevant to the Government's contention that the reports were padded.

We conclude that the charges against the students and management might well have been included in the indictment against the teachers and management.

Nothing in the Supreme Court's decision in *Kotteakos v. United States*, 328 U.S. 750, throws any light on our problem here. In the Kotteakos case the court held that whereas one conspiracy was charged involving many dif-

ferent acts, there were in fact eight different conspiracies. Here we say only that the charges of all three conspiracies could well have been included in a single indictment and the proof adduced as against the students could have been introduced against Gomez and his fellow conspirators on the teacher indictment if it had been tried separately. As was true in *United States v. Samuel Dunkel & Co., et al* (2 Cir.), 184 F. 2d 894, pursuant to the purpose alleged in the Gomez indictment different persons who participated in the conspiracy (here broken into three indictments) obtained and presented false claims to the Government. We think that, under the ruling of this Court in *Kivette v. United States* (5 Cir.), 230 F. 2d 749, the two indictments that were consolidated with the Gomez or "teacher" indictment could well have been made the basis of separate counts in the latter, and thus rule 13 is satisfied.

The only other basis for appeal asserted by appellant is that one of the jurors who heard the case was not a qualified juror under the Florida statutes. This is asserted to be so because the juror had lost his qualification as an elector and was not reinstated as an elector until after the trial started. Appellant cites no federal or Florida authority applicable to this situation. We think the contention is completely answered in *Ford v. United States* (5 Cir), 201 F. 2d 300, where we said:

> ". . . . Where the objection to a juror relates, not to actual prejudice or other fundamental incompetence, but to a statutory disqualification only, such disqualification is ordinarily waived by failure to assert it until after verdict, even though the facts which constitute the disqualification were not previously known to the defendants.

The objection based upon the previous felony convictions comes too late after verdict, no actual bias or prejudice being shown. Spivey v. U.S., 5 Cir., 109 F. 2d 181 text 186; Strang v. U.S. 5 Cir., 53 F. 2d 820; Roush v. U.S., 5 Cir., 47 F. 2d 444; Bush v. U.S., 5 Cir., 16 F. 2d 709; Kohl v. Lehlback, 160 U.S. 293, text 302, 16 S. Ct. 304, 40 L.Ed. 432, tex 435; Raub v. Carpenter, 187 U.S. 159, 23 S.Ct. 72, 47 L.Ed. 119; Frazier v. U.S., 335 U.S. 497, tex 513, 69 S.Ct. 201, 93 L.Ed. 187, text 199; Morton v. Welch, 4 Cir., 162 F. 2d 840; Queenan v. Territory of Oklahoma, 190 U.S. 548, 23 S.Ct. 762, 47 L.Ed. 1175."

Concluding as we do that the trial court did not abuse his discretion in consolidating the three cases for trial and that there is no merit in the second ground of error relied upon, the judgment must be AFFIRMED.

A true copy

Text: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit, New Orleans, Louisiana

(SEAL)

The undersigned hereby certifies that the foregoing petition for rehearing is presented in good faith and not for delay; this petition is restricted to the ground above specified which was available to the petitioner when he filed the petition for writ of certiorari herein but which ground was not presented at that time, he believing that the ground which was presented was sufficiently substantial to obtain the relief sought.

LOUIS A. SABATINO

I HEREBY CERTIFY that a true copy of the foregoing petition was airmailed to the Solicitor General, Department of Justice, Washington 25, D. C., on the _____ day of November, 1957.

LOUIS A. SABATINO

I HEREBY CERTIFY that a true copy of the foregoing petition was mailed to the office of the United States Attorney, Federal Building, Miami, Florida, on the _____ day of November, 1957.

LOUIS A. SABATINO